

Food and Nutrition Service, USDA

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§ 226.5 Donation of commodities.

(a) USDA foods available under section 6 of this Act, section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 1431), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or other authority, and donated by the Department shall be made available to each State.

(b) The value of such commodities donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of reimbursable lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities established under section 6(e) of the Act for the current school year. Adjustments shall be made at the end of each school year to reflect the difference between the number of reimbursable lunches and suppers served during the preceding year and the number served during the current year, and subsequent commodity entitlement shall be based on the adjusted meal counts. At the discretion of FNS, current-year adjustments may be made for significant variations in the number of reimbursable meals served. Such current-year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time. CACFP State agencies electing to receive cash-in-lieu of commodities will receive payments based on the number of reimbursable meals actually served during the current school year.

[47 FR 36527, Aug. 20, 1982, as amended at 62 FR 23618, May 1, 1997]

Subpart C—State Agency Provisions

§ 226.6 State agency administrative responsibilities.

(a) *State agency personnel.* Each State agency must provide sufficient consultative, technical, and managerial personnel to:

- (1) Administer the Program;
- (2) Provide sufficient training and technical assistance to institutions;

(3) Monitor Program performance;

(4) Facilitate expansion of the Program in low-income and rural areas; and

(5) Ensure effective operation of the Program by participating institutions.

(b) *Program applications and agreements.* Each State agency must establish application review procedures, in accordance with paragraphs (b)(1) through (b)(3) of this section, to determine the eligibility of new institutions, renewing institutions, and facilities for which applications are submitted by sponsoring organizations. The State agency must enter into written agreements with institutions in accordance with paragraph (b)(4) of this section.

(1) *Application procedures for new institutions.* Each State agency must establish application procedures to determine the eligibility of new institutions under this part. At a minimum, such procedures must require that institutions submit information to the State agency in accordance with paragraph (f) of this section. For new private non-profit and proprietary child care institutions, such procedures must also include a pre-approval visit by the State agency to confirm the information in the institution's application and to further assess its ability to manage the Program. The State agency must establish factors, consistent with § 226.16(b)(1), that it will consider in determining whether a new sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of the review of the sponsoring organization's management plan, the State agency must determine the appropriate level of staffing for each sponsoring organization, consistent with the staffing range of monitors set forth at § 226.16(b)(1) and the factors it has established. The State agency must ensure that each new sponsoring organization applying for participation after July 29, 2002 meets this requirement. In addition, the State agency's application review procedures must ensure that the following information is included in a new institution's application:

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(i) *Participant eligibility information.* Centers must submit current information on the number of enrolled participants who are eligible for free, reduced-price and paid meals;

(ii) *Enrollment information.* Sponsoring organizations of day care homes must submit current information on:

(A) The total number of children enrolled in all homes in the sponsorship;

(B) An assurance that day care home providers' own children whose meals are claimed for reimbursement in the Program are eligible for free or reduced-price meals;

(C) The total number of tier I and tier II day care homes that it sponsors;

(D) The total number of children enrolled in tier I day care homes;

(E) The total number of children enrolled in tier II day care homes; and

(F) The total number of children in tier II day care homes that have been identified as eligible for free or reduced-price meals;

(iii) *Nondiscrimination statement.* Institutions must submit their nondiscrimination policy statement and a media release, unless the State agency has issued a Statewide media release on behalf of all institutions;

(iv) *Management plan.* Sponsoring organizations must submit a complete management plan that includes:

(A) Detailed information on the organization's management and administrative structure;

(B) A list or description of the staff assigned to Program monitoring, in accordance with the requirements set forth at § 226.16(b)(1);

(C) An administrative budget that includes projected CACFP administrative earnings and expenses;

(D) The procedures to be used by the organization to administer the Program in, and disburse payments to, the child care facilities under its sponsorship; and

(E) For sponsoring organizations of family day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement;

(v) *Budget.* An institution must submit a budget that the State agency

must review in accordance with § 226.7(g);

(vi) *Documentation of licensing/approval.* All centers and family day care homes must document that they meet Program licensing/approval requirements;

(vii) *Documentation of tax-exempt status.* All private nonprofit institutions must document their tax-exempt status;

(viii) *Documentation of for-profit center eligibility.* Institutions must document that each for-profit center for which application is made meets the definition of a *For-profit center*, as set forth at § 226.2;

(ix) *Preference for commodities/cash-in-lieu of commodities.* Institutions must state their preference to receive commodities or cash-in-lieu of commodities;

(x) *Providing benefits to unserved facilities or participants.*—(A) *Criteria.* The State agency must develop criteria for determining whether a new sponsoring organization's participation will help ensure the delivery of benefits to otherwise unserved facilities or participants, and must disseminate these criteria to new sponsoring organizations when they request information about applying to the Program; and

(B) *Documentation.* The new sponsoring organization must submit documentation that its participation will help ensure the delivery of benefits to otherwise unserved facilities or participants in accordance with the State agency's criteria;

(xi) *Presence on National disqualified list.* If an institution or one of its principals is on the National disqualified list and submits an application, the State agency must deny the application. If a sponsoring organization submits an application on behalf of a facility, and either the facility or any of its principals is on the National disqualified list, the State agency must deny the application;

(xii) *Ineligibility for other publicly funded programs.*—(A) *General.* A State agency is prohibited from approving an institution's application if, during the past seven years, the institution or any of its principals have been declared ineligible for any other publicly funded program by reason of violating that

program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or determined eligible for, that program, including the payment of any debts owed;

(B) *Certification.* Institutions must submit:

(1) A statement listing the publicly funded programs in which the institution and its principals have participated in the past seven years; and

(2) A certification that, during the past seven years, neither the institution nor any of its principals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(3) In lieu of the certification, documentation that the institution or the principal previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed; and

(C) *Follow-up.* If the State agency has reason to believe that the institution or its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible;

(xiii) *Information on criminal convictions.* (A) A State agency is prohibited from approving an institution's application if the institution or any of its principals has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; and

(B) Institutions must submit a certification that neither the institution nor any of its principals has been convicted of any activity that occurred during the past seven years and that

indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency;

(xiv) *Certification of truth of applications and submission of names and addresses.* Institutions must submit a certification that all information on the application is true and correct, along with the name, mailing address, and date of birth of the institution's executive director and chairman of the board of directors;

(xv) *Outside employment policy.* Sponsoring organizations must submit an outside employment policy. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest. Sponsoring organizations that are participating on July 29, 2002, must submit an outside employment policy not later than September 27, 2002. The policy will be effective unless disapproved by the State agency;

(xvi) *Bond.* Sponsoring organizations applying for initial participation on or after June 20, 2000, must submit a bond, if such bond is required by State law, regulation, or policy. If the State agency requires a bond for sponsoring organizations pursuant to State law, regulation, or policy, the State agency must submit a copy of that requirement and a list of sponsoring organizations posting a bond to the appropriate FNSRO on an annual basis; and

(xvii) *Compliance with performance standards.* Each new institution must submit information sufficient to document that it is financially viable, is administratively capable of operating the Program in accordance with this part, and has internal controls in effect to ensure accountability. To document this, any new institution must demonstrate in its application that it is capable of operating in conformance with the following performance standards. The State agency must only approve

the applications of those new institutions that meet these performance standards, and must deny the applications of those new institutions that do not meet the standards.

(A) *Performance Standard 1—Financial viability and financial management.* The new institution must be financially viable. Program funds must be expended and accounted for in accordance with the requirements of this part, FNS Instruction 796-2 (“Financial Management in the Child and Adult Care Food Program”), and parts 3015, 3016, and 3019 of this title. To demonstrate financial viability, the new institution must document that it meets the following criteria:

(1) *Description of need/recruitment.* A new sponsoring organization must demonstrate in its management plan that its participation will help ensure the delivery of Program benefits to otherwise unserved facilities or participants, in accordance with criteria developed by the State agency pursuant to paragraph (b)(1)(x) of this section. A new sponsoring organization must demonstrate that it will use appropriate practices for recruiting facilities, consistent with paragraph (p) of this section and any State agency requirements;

(2) *Fiscal resources and financial history.* A new institution must demonstrate that it has adequate financial resources to operate the CACFP on a daily basis, has adequate sources of funds to withstand temporary interruptions in Program payments and/or fiscal claims against the institution, and can document financial viability (for example, through audits, financial statements, etc.); and

(3) *Budgets.* Costs in the institution’s budget must be necessary, reasonable, allowable, and appropriately documented;

(B) *Performance Standard 2—Administrative capability.* The new institution must be administratively capable. Appropriate and effective management practices must be in effect to ensure that the Program operates in accordance with this part. To demonstrate administrative capability, the new institution must document that it meets the following criteria:

(1) Has an adequate number and type of qualified staff to ensure the operation of the Program in accordance with this part;

(2) If a sponsoring organization, documents in its management plan that it employs staff sufficient to meet the ratio of monitors to facilities, taking into account the factors that the State agency will consider in determining a sponsoring organization’s staffing needs, as set forth in § 226.16(b)(1); and

(3) If a sponsoring organization, has Program policies and procedures in writing that assign Program responsibilities and duties, and ensure compliance with civil rights requirements; and

(C) *Performance Standard 3—Program accountability.* The new institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program will operate in accordance with the requirements of this part. To demonstrate Program accountability, the new institution must document that it meets the following criteria:

(1) *Board of directors.* Has adequate oversight of the Program by its governing board of directors;

(2) *Fiscal accountability.* Has a financial system with management controls specified in writing. For new sponsoring organizations, these written operational policies must assure:

(i) Fiscal integrity and accountability for all funds and property received, held, and disbursed;

(ii) The integrity and accountability of all expenses incurred;

(iii) That claims will be processed accurately, and in a timely manner;

(iv) That funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(v) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;

(3) *Recordkeeping.* Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans

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and appropriate records on facility operations;

(4) *Sponsoring organization operations.* If a new sponsoring organization, documents in its management plan that it will:

(i) Provide adequate and regular training of sponsoring organization staff and sponsored facilities in accordance with § 226.15(e)(12) and (e)(14) and § 226.16(d)(2) and (d)(3);

(ii) Perform monitoring in accordance with § 226.16(d)(4), to ensure that sponsored facilities accountably and appropriately operate the Program;

(iii) If a sponsor of family day care homes, accurately classify day care homes as tier I or tier II in accordance with § 226.15(f); and

(iv) Have a system in place to ensure that administrative costs funded from Program reimbursements do not exceed regulatory limits set forth at §§ 226.12(a) and 226.16(b)(1); and

(5) *Meal service and other operational requirements.* Independent centers and facilities will follow practices that result in the operation of the Program in accordance with the meal service, recordkeeping, and other operational requirements of this part. These practices must be documented in the independent center's application or in the sponsoring organization's management plan and must demonstrate that independent centers or sponsored facilities will:

(i) Provide meals that meet the meal patterns set forth in § 226.20;

(ii) Comply with licensure or approval requirements set forth in paragraph (d) of this section;

(iii) Have a food service that complies with applicable State and local health and sanitation requirements;

(iv) Comply with civil rights requirements;

(v) Maintain complete and appropriate records on file; and

(vi) Claim reimbursement only for eligible meals.

(2) *Application procedures for renewing institutions.* Each State agency must establish application procedures to determine the eligibility of renewing institutions under this part. Renewing institutions must not be required to submit a free and reduced-price policy statement or a nondiscrimination

statement unless they make substantive changes to either statement. The State agency must require each renewing institution participating in the Program to reapply for participation at a time determined by the State agency, except that no institution may be allowed to participate for less than 12 or more than 36 calendar months under an existing application, except when the State agency determines that unusual circumstances warrant reapplication in less than 12 months. The State agency must establish factors, consistent with § 226.16(b)(1), that it will consider in determining whether a renewing sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of the review of the renewing sponsoring organization's management plan, the State agency must determine the appropriate level of staffing for the sponsoring organization, consistent with the staffing range of monitors set forth at § 226.16(b)(1) and the factors it has established. The State agency must ensure that each currently participating sponsoring organization meets this requirement no later than July 29, 2003. At a minimum, the application review procedures established by the State agency must require that renewing institutions submit information to the State agency in accordance with paragraph (f) of this section. In addition, the State agency's application review procedures must ensure that the following information is included in a renewing institution's application:

(i) *Management plan.* For renewing sponsoring organizations, a complete management plan that meets the requirements of paragraphs (b)(1)(iv), (b)(1)(v), (f)(1)(vi), and (f)(3)(i) of this section and § 226.7(g);

(ii) *Presence on National disqualified list.* A renewing institution is prohibited from submitting a renewal application if it or any of its principals is currently on the National disqualified list. If such an institution submits an application, the State agency must deny the application. A renewing sponsoring organization is also prohibited from submitting a renewal application on behalf of a facility if the facility or any of its principals is on the National

disqualified list. If a renewing sponsoring organization submits an application on behalf of such a facility, the State agency must deny the facility's application;

(iii) *Ineligibility for other publicly funded programs.*—(A) *General.* A State agency is prohibited from approving a renewing institution's application if, during the past seven years, the institution or any of its principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or determined eligible for, that program, including the payment of any debts owed;

(B) *Certification.* Renewing institutions must submit:

(1) A statement listing the publicly funded programs in which the institution and its principals have participated in the past seven years; and

(2) A certification that, during the past seven years, neither the institution nor any of its principals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(3) In lieu of the certification, documentation that the institution or the principal previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed; and

(C) *Follow-up.* If the State agency has reason to believe that the renewing institution or any of its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible;

(iv) *Information on criminal convictions.* (A) A State agency is prohibited from approving a renewing institution's application if the institution or any of its principals have been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity.

A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; and

(B) Renewing institutions must submit a certification that neither the institution nor any of its principals have been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency;

(v) *Certification of truth of applications and submission of names and addresses.* Renewing institutions must submit a certification that all information on the application is true and correct, along with the name, mailing address, and date of birth of the institution's executive director and chairman of the board of directors;

(vi) *Outside employment policy.* Renewing sponsoring organizations must submit an outside employment policy. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest. Sponsoring organizations that are participating on July 29, 2002, must submit an outside employment policy not later than September 27, 2002. The policy will be effective unless disapproved by the State agency;

(vii) *Compliance with performance standards.* Each renewing institution must submit information sufficient to document that it is financially viable, is administratively capable of operating the Program in accordance with this part, and has internal controls in effect to ensure accountability. To document this, any renewing institution must demonstrate in its application

that it is capable of operating in conformance with the following performance standards. The State agency must only approve the applications of those renewing institutions that meet these performance standards, and must deny the applications of those that do not meet the standards.

(A) *Performance Standard 1—Financial viability and financial management.* The renewing institution must be financially viable. Program funds must be expended and accounted for in accordance with the requirements of this part, FNS Instruction 796-2 (“Financial Management in the Child and Adult Care Food Program”), and parts 3015, 3016 and 3019 of this title. To demonstrate financial viability, the renewing institution must document that it meets the following criteria:

(1) *Description of need/recruitment.* A renewing sponsoring organization must demonstrate that it will use appropriate practices for recruiting facilities, consistent with paragraph (p) of this section and any State agency requirements;

(2) *Fiscal resources and financial history.* A renewing institution must demonstrate that it has adequate financial resources to operate the CACFP on a daily basis, has adequate sources of funds to withstand temporary interruptions in Program payments and/or fiscal claims against the institution, and can document financial viability (for example, through audits, financial statements, etc.); and

(3) *Budgets.* Costs in the renewing institution’s budget must be necessary, reasonable, allowable, and appropriately documented;

(B) *Performance Standard 2—Administrative capability.* The renewing institution must be administratively capable. Appropriate and effective management practices must be in effect to ensure that the Program operates in accordance with this part. To demonstrate administrative capability, the renewing institution must document that it meets the following criteria:

(1) Has an adequate number and type of qualified staff to ensure the operation of the Program in accordance with this part;

(2) If a sponsoring organization, documents in its management plan that it

employs staff sufficient to meet the ratio of monitors to facilities, taking into account the factors that the State agency will consider in determining a sponsoring organization’s staffing needs, as set forth in § 226.16(b)(1); and

(3) If a sponsoring organization, has Program policies and procedures in writing that assign Program responsibilities and duties, and ensure compliance with civil rights requirements; and

(C) *Performance Standard 3—Program accountability.* The renewing institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program operates in accordance with the requirements of this part. To demonstrate Program accountability, the renewing institution must document that it meets the following criteria:

(1) *Board of directors.* Has adequate oversight of the Program by its governing board of directors;

(2) *Fiscal accountability.* Has a financial system with management controls specified in writing. For sponsoring organizations, these written operational policies must assure:

(i) Fiscal integrity and accountability for all funds and property received, held, and disbursed;

(ii) The integrity and accountability of all expenses incurred;

(iii) That claims are processed accurately, and in a timely manner;

(iv) That funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(v) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;

(3) *Recordkeeping.* Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations;

(4) *Sponsoring organization operations.* A renewing sponsoring organization must document in its management plan that it will:

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(i) Provide adequate and regular training of sponsoring organization staff and sponsored facilities in accordance with § 226.15(e)(12) and (e)(14) and § 226.16(d)(2) and (d)(3);

(ii) Perform monitoring in accordance with § 226.16(d)(4), to ensure that sponsored facilities accountably and appropriately operate the Program;

(iii) If a sponsor of family day care homes, accurately classify day care homes as tier I or tier II in accordance with § 226.15(f); and

(iv) Have a system in place to ensure that administrative costs funded from Program reimbursements do not exceed regulatory limits set forth at §§ 226.12(a) and 226.16(b)(1); and

(5) *Meal service and other operational requirements.* All independent centers and facilities must follow practices that result in the operation of the Program in accordance with the meal service, recordkeeping, and other operational requirements of this part. These practices must be documented in the independent center's application or in the sponsoring organization's management plan and must demonstrate that independent centers or sponsored facilities:

(i) Provide meals that meet the meal patterns set forth in § 226.20;

(ii) Comply with licensure or approval requirements set forth in paragraph (d) of this section;

(iii) Have a food service that complies with applicable State and local health and sanitation requirements;

(iv) Comply with civil rights requirements;

(v) Maintain complete and appropriate records on file; and

(vi) Claim reimbursement only for eligible meals.

(3) *State agency notification requirements.* Any new or renewing institution applying for participation in the Program must be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application. Whenever possible, State agencies should provide assistance to institutions that have submitted an incomplete application. Any disapproved applicant institution or family day care home must be notified of the reasons for its disapproval and its right to

appeal under paragraph (k) or (l), respectively, of this section.

(4) *Program agreements.* (i) The State agency must require each institution that has been approved for participation in the Program to enter into an agreement governing the rights and responsibilities of each party. The State agency may allow a renewing institution to amend its existing Program agreement in lieu of executing a new agreement. The existence of a valid agreement, however, does not eliminate the need for an institution to comply with the reapplication and related provisions at paragraphs (b) and (f) of this section.

(ii) State agencies may elect to enter into permanent agreements with institutions. However, if they elect not to enter into permanent agreements with institutions, the length of time during which such agreements are in effect must be no less than one and no more than three years, except that:

(A) The State agency and an institution that is a school food authority must enter into a single permanent agreement for all child nutrition programs administered by the school food authority and the State agency;

(B) If a State agency denies the application of a renewing institution, it must temporarily extend its agreement with that institution in accordance with paragraph (c)(2)(iii)(D) of this section;

(C) If the State agency determines that unusual circumstances warrant reapplication in less than 12 months, the State agency may approve the agreement with the institution for a period of less than one year.

(iii) Any agreement that extends from one fiscal year into the following fiscal year must stipulate that, in subsequent years, the agreement is in effect contingent upon the availability of Program funds. However, this does not limit the State agency's ability to terminate the agreement in accordance with paragraph (c) of this section.

(iv) The Program agreement must provide that the institution accepts final financial and administrative responsibility for management of a proper, efficient, and effective food service, and will comply with all requirements

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under this part. In addition, the agreement must state that the sponsor must comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Department's regulations concerning nondiscrimination (parts 15, 15a and 15b of this title), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person may, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

(v) The Program agreement must also notify the institution of the right of the State agency, the Department, and other State or Federal officials to make announced or unannounced reviews of their operations during the institution's normal hours of child or adult care operations, and that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities.

(c) *Denial of applications and termination of agreements*—(1) *Denial of a new institution's application*—(i) *General*. If a new institution's application does not meet all of the requirements in paragraph (b) of this section and in §§ 226.15(b) and 226.16(b), the State agency must deny the application. If, in reviewing a new institution's application, the State agency determines that the institution has committed one or more serious deficiency listed in paragraph (c)(1)(ii) of this section, the State agency must initiate action to:

(A) Deny the new institution's application; and

(B) Disqualify the new institution and the responsible principals and responsible individuals (e.g., the person who signs the application).

(ii) *List of serious deficiencies for new institutions*. The list of serious deficiencies is not identical for each category of institution (new, renewing, participating) because the type of information likely to be available to the

State agency is different, depending on whether the State agency is reviewing a new or renewing institution's application or is conducting a review of a participating institution. Serious deficiencies for new institutions are:

(A) Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; or

(B) Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

(iii) *Serious deficiency notification procedures for new institutions*. If the State agency determines that a new institution has committed one or more serious deficiency listed in paragraph (c)(1)(ii) of this section, the State agency must use the following procedures to provide the institution and the responsible principals and responsible individuals with notice of the serious deficiency(ies) and an opportunity to take corrective action.

(A) *Notice of serious deficiency*. The State agency must notify the institution's executive director and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice must identify the responsible principals and responsible individuals (e.g., for new institutions, the person who signed the application) and must be sent to those persons as well. The State agency may specify in the notice different corrective action, and time periods for completing the corrective action, for the institution and the responsible principals and responsible individuals. At the same time the notice is issued, the State agency must add the institution to the State agency list, along with the

basis for the serious deficiency determination, and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

- (1) The serious deficiency(ies);
- (2) The actions to be taken to correct the serious deficiency(ies);
- (3) The time allotted to correct the serious deficiency(ies) in accordance with paragraph (c)(4) of this section.
- (4) That the serious deficiency determination is not subject to administrative review;
- (5) That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in denial of the institution's application and the disqualification of the institution and the responsible principals and responsible individuals; and
- (6) That the State agency will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until the State agency has approved the institution's application and the institution has signed a Program agreement.

(B) *Successful corrective action.*

(1) If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the State agency's satisfaction, the State agency must:

(i) notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency has rescinded its serious deficiency determination; and

(ii) offer the new institution the opportunity to resubmit its application. If the new institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(2) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must:

(i) continue with the actions (as set forth in paragraph (c)(1)(iii)(C) of this section) against the remaining parties;

(ii) at the same time the notice is issued, the State agency must also update the State agency list to indicate that the serious deficiency(ies) has(ve)

been corrected and provide a copy of the notice to the appropriate FNSRO; and

(iii) if the new institution has corrected the serious deficiency(ies), offer it the opportunity to resubmit its application. If the new institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(C) *Application denial and proposed disqualification.* If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's application has been denied. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(1) That the institution's application has been denied and the State agency is proposing to disqualify the institution and the responsible principals and responsible individuals;

(2) The basis for the actions; and

(3) The procedures for seeking an administrative review (in accordance with paragraph (k) of this section) of the application denial and proposed disqualifications.

(D) *Program payments.* The State agency is prohibited from paying any claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred until the State agency has approved its application and the institution and State agency have signed a Program agreement.

(E) *Disqualification.* When the time for requesting an administrative review expires or when the administrative review official upholds the State agency's denial and proposed disqualifications, the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals that the institution and the responsible principal and responsible individuals have been disqualified. At the same time the notice

is issued, the State agency must also update the State agency list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(2) *Denial of a renewing institution's application.*—(i) *General.* If a renewing institution's application does not meet all of the requirements in paragraph (b) of this section and in §§ 226.15(b) and 226.16(b), the State agency must deny the application. If, in reviewing a renewing institution's application, the State agency determines that the institution has committed one or more serious deficiency listed in paragraph (c)(2)(ii) of this section, the State agency must *initiate* action to deny the renewing institution's application and *initiate* action to disqualify the renewing institution and the responsible principals and responsible individuals.

(ii) *List of serious deficiencies for renewing institutions.* The list of serious deficiencies is not identical for each category of institution (new, renewing, participating) because the type of information likely to be available to the State agency is different, depending on whether the State agency is reviewing a new or renewing institution's application or is conducting a review of a participating institution. Serious deficiencies for renewing institutions are:

(A) Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency;

(B) Failure to operate the Program in conformance with the performance standards set forth in paragraphs (b)(1)(xvii) and (b)(2)(vii) of this section;

(C) Failure to comply with the bid procedures and contract requirements

of applicable Federal procurement regulations;

(D) Use of a food service management company that is in violation of health codes;

(E) Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with § 226.15(f);

(F) Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with § 226.16(d);

(G) Failure to perform any of the other financial and administrative responsibilities required by this part;

(H) Failure to properly implement and administer the day care home termination and administrative review provisions set forth at paragraph (l) of this section and § 226.16(l); or

(I) any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

(iii) *Serious deficiency notification procedures for renewing institutions.* If the State agency determines that a renewing institution has committed one or more serious deficiency listed in paragraph (c)(2)(ii) of this section, the State agency must use the following procedures to provide the institution and the responsible principals and responsible individuals notice of the serious deficiency(ies) and an opportunity to take corrective action.

(A) *Notice of serious deficiency.* The State agency must notify the institution's executive director and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice must identify the responsible principals and responsible individuals and must be sent to those persons as well. The State agency may specify in the notice different corrective action, and time periods for completing the corrective action, for the institution and the responsible principals and responsible individuals. At the same time the notice is issued, the State agency must add the institution to the State agency list, along with the basis for the serious deficiency determination, and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

- (1) The serious deficiency(ies);
- (2) The actions to be taken to correct the serious deficiency(ies);
- (3) The time allotted to correct the serious deficiency(ies) in accordance with paragraph (c)(4) of this section;
- (4) That the serious deficiency determination is not subject to administrative review.
- (5) That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the State agency's denial of the institution's application, the proposed termination of the institution's agreement (if the State agency has temporarily extended the agreement pursuant to paragraph (c)(2)(iii)(D) of this section) and the proposed disqualification of the institution and the responsible principals and responsible individuals; and
- (6) That the institution's voluntary termination of its agreement with the State agency after having been notified that it is seriously deficient will still result in the institution's formal termination by the State agency and placement of the institution and its responsible principals and responsible individuals on the National disqualified list.

(B) *Successful corrective action.* (1) If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the State agency's satisfaction, the State agency must:

- (i) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency has rescinded its serious deficiency determination; and
 - (ii) Offer the renewing institution the opportunity to resubmit its application. If the renewing institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.
- (2) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must:

- (i) continue with the actions (as set forth in paragraph (c)(2)(iii)(C) of this section) against the remaining parties;

(ii) at the same time the notice is issued, the State agency must also update the State agency list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to the appropriate FNSRO; and

(iii) if the renewing institution has corrected the serious deficiency(ies), offer it the opportunity to resubmit its application. If the renewing institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(C) *Application denial and proposed disqualification.* If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's application has been denied. At the same time the notice is issued, the State agency must update the State agency list and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

- (1) That the institution's application has been denied and the State agency is proposing to terminate the institution's temporarily-extended agreement and to disqualify the institution and the responsible principals and responsible individuals;

(2) The basis for the actions;

(3) That, if the institution voluntarily terminates its agreement after receiving the notice of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(4) The procedures for seeking an administrative review (in accordance with paragraph (k) of this section) of the application denial and proposed disqualifications; and

(5) That the institution may continue to participate in the Program and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

(D) *Program payments and extended agreement.* If the renewing institution's agreement expires before the end of the time allotted for corrective action,

and/or the conclusion of any administrative review requested by the renewing institution:

(1) The State agency must temporarily extend its current agreement with the renewing institution and continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred; and

(2) The actions set forth in paragraph (c)(2)(iii)(D)91 of this section must be taken either until the serious deficiency(ies) is corrected or until the institution's agreement is terminated, including the period of any administrative review;

(E) *Agreement termination and disqualification.* When the time for requesting an administrative review expires or when the administrative review official upholds the State agency's denial of the institution's application, the proposed termination, and the proposed disqualifications, the State agency must:

(1) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the temporarily-extended agreement has been terminated and that the institution and the responsible principals and responsible individuals have been disqualified;

(2) Update the State agency list at the time such notice is issued; and

(3) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(3) *Termination of a participating institution's agreement.* (i) *General.* If the State agency holds an agreement with an institution operating in more than one State that has been disqualified from the Program by another State agency and placed on the National disqualified list, the State agency must terminate the institution's agreement effective no later than 45 days of the date of the institution's disqualification by the other State agency. At the same time the notice of termination is issued, the State agency must add the institution to the State agency list and indicate that the institution's agreement has been terminated and provide

a copy of the notice to the appropriate FNSRO. If the State agency determines that a participating institution has committed one or more serious deficiency listed in paragraph (c)(3)(ii) of this section, the State agency must *initiate* action to terminate the agreement of a participating institution and *initiate* action to disqualify the institution and any responsible principals and responsible individuals.

(ii) *List of serious deficiencies for participating institutions.* The list of serious deficiencies is not identical for each category of institution (new, renewing, participating) because the type of information likely to be available to the State agency is different, depending on whether the State agency is reviewing a new or renewing institution's application or is conducting a review of a participating institution. Serious deficiencies for participating institutions are:

(A) Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency;

(B) Permitting an individual who is on the National disqualified list to serve in a principal capacity with the institution or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home;

(C) Failure to operate the Program in conformance with the performance standards set forth in paragraphs (b)(1)(xvii) and (b)(2)(vii) of this section;

(D) Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;

(E) Failure to return to the State agency any advance payments that exceeded the amount earned for serving

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eligible meals, or failure to return disallowed start-up or expansion payments;

(F) Failure to maintain adequate records;

(G) Failure to adjust meal orders to conform to variations in the number of participants;

(H) Claiming reimbursement for meals not served to participants;

(I) Claiming reimbursement for a significant number of meals that do not meet Program requirements;

(J) Use of a food service management company that is in violation of health codes;

(K) Failure of a sponsoring organization to disburse payments to its facilities in accordance with the regulations at § 226.16(g) and (h) or in accordance with its management plan;

(L) Claiming reimbursement for meals served by a for-profit child care center or a for-profit outside-school-hours care center during a calendar month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries;

(M) Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25 percent of its enrolled adult participants were title XIX or title XX beneficiaries;

(N) Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with § 226.15(f);

(O) Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with § 226.16(d);

(P) Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses;

(Q) Failure to perform any of the other financial and administrative responsibilities required by this part;

(R) Failure to properly implement and administer the day care home termination and administrative review provisions set forth at paragraph (l) of this section and § 226.16(l);

(S) The fact the institution or any of the institution's principals have been declared ineligible for any other pub-

licly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program, including the payment of any debts owed;

(T) Conviction of the institution or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; or

(U) Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

(iii) *Serious deficiency notification procedures for participating institutions.* If the State agency determines that a participating institution has committed one or more serious deficiency listed in paragraph (c)(3)(ii) of this section, the State agency must use the following procedures to provide the institution and the responsible principals and responsible individuals notice of the serious deficiency(ies) and an opportunity to take corrective action. However, if the serious deficiency(ies) constitutes an imminent threat to the health or safety of participants, or the institution has engaged in activities that threaten the public health or safety, the State agency must follow the procedures in paragraph (c)(5)(i) of this section instead of the procedures below. Further, if the serious deficiency is the submission of a false or fraudulent claim, in addition to the procedures below, the State agency may suspend the institution's participation in accordance with paragraph (c)(5)(ii) of this section.

(A) *Notice of serious deficiency.* The State agency must notify the institution's executive director and chairman of the board of directors that the institution has been determined seriously deficient. The notice must identify the

responsible principals and responsible individuals and must be sent to those persons as well. The State agency may specify in the notice different corrective action and time periods for completing the corrective action for the institution and the responsible principals and responsible individuals. At the same time the notice is issued, the State agency must add the institution to the State agency list, along with the basis for the serious deficiency determination, and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

- (1) The serious deficiency(ies);
- (2) The actions to be taken to correct the serious deficiency(ies);
- (3) The time allotted to correct the serious deficiency(ies) in accordance with paragraph (c)(4) of this section;
- (4) That the serious deficiency determination is not subject to administrative review.
- (5) That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the State agency's proposed termination of the institution's agreement and the proposed disqualification of the institution and the responsible principals and responsible individuals; and
- (6) That the institution's voluntary termination of its agreement with the State agency after having been notified that it is seriously deficient will still result in the institution's formal termination by the State agency and placement of the institution and its responsible principals and responsible individuals on the National disqualified list.

(B) *Successful corrective action.* (1) If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the State agency's satisfaction, the State agency must:

- (i) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency has rescinded its serious deficiency determination; and
- (ii) Offer the renewing institution the opportunity to resubmit its application. If the renewing institution resubmits its application, the State agency must complete its review of the appli-

cation within 30 days after receiving a complete and correct application.

(2) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must:

- (i) Continue with the actions (as set forth in paragraph (c)(3)(iii)(C) of this section) against the remaining parties;
- (ii) At the same time the notice is issued, the State agency must also update the State agency list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to the appropriate FNSRO; and

(iii) If the renewing institution has corrected the serious deficiency(ies), offer it the opportunity to resubmit its application. If the renewing institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(C) *Proposed termination and proposed disqualification.* If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency is proposing to terminate the institution's agreement and to disqualify the institution and the responsible principals and responsible individuals. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

- (1) That the State agency is proposing to terminate the institution's agreement and to disqualify the institution and the responsible principals and responsible individuals;
- (2) The basis for the actions;
- (3) That, if the institution voluntarily terminates its agreement after receiving the notice of proposed termination, the institution and the responsible principals and responsible individuals will be disqualified.

(4) The procedures for seeking an administrative review (in accordance with paragraph (k) of this section) of

the application denial and proposed disqualifications; and

(5) That, unless participation has been suspended, the institution may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

(D) *Program payments.* Unless participation has been suspended, the State agency must continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency(ies) is corrected or the institution's agreement is terminated, including the period of any administrative review.

(E) *Agreement termination and disqualification.* When the time for requesting an administrative review expires or when the administrative review official upholds the State agency's proposed termination and disqualifications, the State agency must:

(1) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement has been terminated and that the institution and the responsible principals and responsible individuals have been disqualified;

(2) Update the State agency list at the time such notice is issued; and

(3) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(4) *Corrective action timeframes*—(i) *General.* Except as noted in this paragraph (c)(4), the State agency is prohibited from allowing more than 90 days for corrective action from the date the institution receives the serious deficiency notice.

(ii) *Unlawful practices.* If the State agency determines that the institution has engaged in unlawful practices, submitted false or fraudulent claims or other information to the State agency, or been convicted of or concealed a criminal background, the State agency is prohibited from allowing more than 30 days for corrective action.

(iii) *Long-term changes.* For serious deficiencies requiring the long-term revision of management systems or processes, the State agency may permit more than 90 days to complete the corrective action as long as a corrective action plan is submitted to and approved by the State agency within 90 days (or such shorter deadline as the State agency may establish). The corrective action must include milestones and a definite completion date that the State agency will monitor. The determination of serious deficiency will remain in effect until the State agency determines that the serious deficiency(ies) has(ve) been fully and permanently corrected within the allotted time.

(5) *Suspension of an institution's participation.* A State agency is prohibited from suspending an institution's participation (including all Program payments) except for the reasons set forth in this paragraph (c)(5).

(i) *Public health or safety*—(A) *General.* If State or local health or licensing officials have cited an institution for serious health or safety violations, the State agency must immediately suspend the institution's Program participation, initiate action to terminate the institution's agreement, and initiate action to disqualify the institution and the responsible principals and responsible individuals prior to any formal action to revoke the institution's licensure or approval. If the State agency determines that there is an imminent threat to the health or safety of participants at an institution, or that the institution has engaged in activities that threaten the public health or safety, the State agency must immediately notify the appropriate State or local licensing and health authorities and take action that is consistent with the recommendations and requirements of those authorities. An imminent threat to the health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies; however, the State agency must use the procedures in this paragraph (c)(5)(i) (instead of the procedures in paragraph (c)(3) of this section) to provide the institution notice of the suspension of

participation, serious deficiency, proposed termination of the institution's agreement, and proposed disqualification of the responsible principals and responsible individuals.

(B) *Notice of suspension, serious deficiency, proposed termination, and proposed disqualification.* The State agency must notify the institution's executive director and chairman of the board of directors that the institution's participation (including Program payments) has been suspended, that the institution has been determined to be seriously deficient, and that the State agency proposes to terminate the institution's agreement and to disqualify the institution and the responsible principals and responsible individuals. The notice must also identify the responsible principals and responsible individuals and must be sent to those persons as well. At the same time this notice is sent, the State agency must add the institution and the responsible principals and responsible individuals to the State agency list, along with the basis for the serious deficiency determination and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(1) That the State agency is suspending the institution's participation (including Program payments), proposing to terminate the institution's agreement, and proposing to disqualify the institution and the responsible principals and responsible individuals;

(2) The serious deficiency(ies);

(3) That, if the institution voluntarily terminates its agreement with the State agency after having been notified of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(4) That the serious deficiency determination is not subject to administrative review;

(5) The procedures for seeking an administrative review (consistent with paragraph (k) of this section) of the suspension, proposed termination, and proposed disqualifications; and

(6) That, if the administrative review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable

administrative costs incurred during the suspension period.

(C) *Agreement termination and disqualification.* When the time for requesting an administrative review expires or when the administrative review official upholds the State agency's proposed termination and disqualifications, the State agency must:

(1) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement has been terminated and that the institution and the responsible principals and responsible individuals have been disqualified;

(2) update the State agency list at the time such notice is issued; and

(3) provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(D) *Program payments.* The State agency is prohibited from paying any claims for reimbursement from a suspended institution. However, if the suspended institution prevails in the administrative review of the proposed termination, the State agency must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(ii) *False or fraudulent claims—(A) General.* If the State agency determines that an institution has knowingly submitted a false or fraudulent claim, the State agency *may* initiate action to suspend the institution's participation and must *initiate* action to terminate the institution's agreement and initiate action to disqualify the institution and the responsible principals and responsible individuals (in accordance with paragraph (c)(3) of this section). The submission of a false or fraudulent claim constitutes a serious deficiency as set forth in paragraph (c)(3)(ii) of this section, which lists serious deficiencies for participating institutions. If the State agency wishes to suspend the institution's participation, it must use the following procedures to issue the notice of proposed suspension of participation *at the same time* it issues the serious deficiency notice, which

must include the information described in paragraph (c)(3)(iii)(A) of this section.

(B) *Proposed suspension of participation.* If the State agency decides to propose to suspend an institution's participation due to the institution's submission of a false or fraudulent claim, it must notify the institution's executive director and chairman of the board of directors that the State agency intends to suspend the institution's participation (including all Program payments) unless the institution requests a review of the proposed suspension. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate FNSRO. The notice must identify the responsible principals and responsible individuals and must be sent to those persons as well. The notice must also specify:

(1) That the State agency is proposing to suspend the institution's participation;

(2) That the proposed suspension is based on the institution's submission of a false or fraudulent claim, as described in the serious deficiency notice;

(3) The effective date of the suspension (which may be no earlier than 10 days after the institution receives the suspension notice);

(4) The name, address and telephone number of the suspension review official who will conduct the suspension review; and

(5) That if the institution wishes to have a suspension review, it must request a review and submit to the suspension review official written documentation opposing the proposed suspension within 10 days of the institution's receipt of the notice.

(C) *Suspension review.* If the institution requests a review of the State agency's proposed suspension of participation, the suspension review must be heard by a suspension review official who must:

(1) Be an independent and impartial person other than, and not accountable to, any person involved in the decision to initiate suspension proceedings;

(2) Immediately notify the State agency that the institution has contested the proposed suspension and must obtain from the State agency its

notice of proposed suspension of participation, along with all supporting documentation; and

(3) Render a decision on suspension of participation within 10 days of the deadline for receiving the institution's documentation opposing the proposed suspension.

(D) *Suspension review decision.* If the suspension review official determines that the State agency's proposed suspension is not appropriate, the State agency is prohibited from suspending participation. If the suspension review official determines, based on a preponderance of the evidence, that the State agency's action was appropriate, the State agency must suspend the institution's participation (including all Program payments), effective on the date of the suspension review decision. The State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's participation has been suspended. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(1) That the State agency is suspending the institution's participation (including Program payments);

(2) The effective date of the suspension (the date of the suspension review decision);

(3) The procedures for seeking an administrative review (in accordance with paragraph (k) of this section) of the suspension; and

(4) That if the administrative review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(E) *Program payments.* A State agency is prohibited from paying any claims for reimbursement submitted by a suspended institution. However, if the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, the State agency must ensure that sponsored facilities continue to receive reimbursement for

eligible meals served during the suspension period. If the suspended institution prevails in the administrative review of the proposed termination, the State agency must pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(F) *Maximum time for suspension.* Under no circumstances may the suspension of participation remain in effect for more than 120 days following the suspension review decision.

(6) *FNS determination of serious deficiency.* (i) *General.* FNS may determine independently that a participating institution has committed one or more serious deficiency listed in paragraph (c)(3)(ii) of this section, which lists serious deficiencies for participating institutions.

(ii) *Serious deficiency notification procedures.* If FNS determines that an institution has committed one or more serious deficiency listed in paragraph (c)(3)(ii) of this section (the list of serious deficiencies for participating institutions), FNS will use the following procedures to provide the institution and the responsible principals and responsible individuals with notice of the serious deficiency(ies) and an opportunity to take corrective action.

(A) *Notice of serious deficiency.* FNS will notify the institution's executive director and chairman of the board of directors that the institution has been found to be seriously deficient. The notice will identify the responsible principals and responsible individuals and will be sent to them as well. FNS may specify in the notice different corrective action and time periods for completing the corrective action, for the institution and the responsible principals and responsible individuals. The notice will also specify:

- (1) The serious deficiency(ies);
- (2) The actions to be taken to correct the serious deficiency(ies);
- (3) The time allotted to correct the serious deficiency(ies) in accordance with paragraph (c)(4) of this section;
- (4) That failure to fully and permanently correct the serious deficiency(ies) within the allotted time, or the institution's voluntary termination of its agreement(s) with any

State agency after having been notified that it is seriously deficient, will result in the proposed disqualification of the institution and the responsible principals and responsible individuals and the termination of its agreement(s) with all State agencies; and

(5) That the serious deficiency determination is not subject to administrative review.

(B) *Suspension of participation.* If FNS determines that there is an imminent threat to the health or safety of participants at an institution, or that the institution has engaged in activities that threaten the public health or safety, any State agency that holds an agreement with the institution must suspend the participation of the institution. If FNS determines that the institution has submitted a false or fraudulent claim, it may require any State agency that holds an agreement with the institution to initiate action to suspend the institution's participation for false or fraudulent claims in accordance with paragraph (c)(5)(ii) of this section (which deals with an institution's suspension by a State agency for submission of false or fraudulent claims). In both cases, FNS will provide the State agency the information necessary to support these actions and, in the case of a false and fraudulent claim, will provide an individual to serve as the suspension review official if requested by the State agency.

(C) *Successful corrective action.* (1) If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to FNS's satisfaction, FNS will notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that it has rescinded its serious deficiency determination; and

(2) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), FNS will continue with the actions (as set forth in paragraph (c)(6)(ii)(D) of this section) against the remaining parties.

(D) *Proposed disqualification.* If timely corrective action is not taken to fully and permanently correct the serious

deficiency(ies), FNS will notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that FNS is proposing to disqualify them. The notice will also specify:

(1) That FNS is proposing to disqualify the institution and the responsible principals and responsible individuals;

(2) The basis for the actions;

(3) That, if the institution seeks to voluntarily terminate its agreement after receiving the notice of proposed disqualification, the institution and the responsible principals and responsible individuals will be disqualified;

(4) The procedures for seeking an administrative review (in accordance with paragraph (k) of this section) of the proposed disqualifications;

(5) That unless participation has been suspended, the institution may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed; and

(6) That if the institution does not prevail in the administrative review, any State agency holding an agreement with the institution will be required to terminate that agreement and the institution is prohibited from seeking an administrative review of the termination of the agreement by the State agency(ies).

(E) *Disqualification.* When the time for requesting an administrative review expires or when the administrative review official upholds FNS's proposed disqualifications, FNS will notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution and the responsible principal or responsible individual have been disqualified.

(F) *Program payments.* If the State agency holds an agreement with an institution that FNS has determined to be seriously deficient, the State agency must continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency(ies) is corrected or the State

agency terminates the institution's agreement, including the period of any administrative review, unless participation has been suspended.

(G) *Required State agency action.* (1) *Disqualified institutions.* If the State agency holds an agreement with an institution that FNS determines to be seriously deficient and subsequently disqualifies, the State agency must terminate the institution's agreement effective no later than 45 days after the date of the institution's disqualification by FNS. As noted in paragraph (k)(3)(iv) of this section, the termination is not subject to administrative review. At the same time the notice of termination is issued, the State agency must add the institution to the State agency list and provide a copy of the notice to the appropriate FNSRO.

(2) *Disqualified principals.* If the State agency holds an agreement with an institution whose principal FNS determines to be seriously deficient and subsequently disqualifies, the State agency must determine the institution to be seriously deficient and initiate action to terminate and disqualify the institution in accordance with the procedures in paragraph (c)(3) of this section. The State agency must initiate these actions no later than 45 days after the date of the principal's disqualification by FNS.

(7) *National disqualified list*—(i) *Maintenance and availability of list.* FNS will maintain the National disqualified list and make it available to all State agencies and all sponsoring organizations.

(ii) *Effect on institutions.* No organization on the National disqualified list may participate in the Program as an institution. As noted in paragraphs (b)(1)(xi) and (b)(2)(ii) of this section, the State agency must deny the application of a new or renewing institution if the institution is on the National disqualified list. In addition, as noted in paragraphs (c)(3)(i) and (c)(6)(ii)(G)(I) of this section, the State agency must terminate the agreement of any participating institution that is disqualified by another State agency or by FNS.

(iii) *Effect on sponsored centers.* No organization on the National disqualified list may participate in the Program as

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a sponsored center. As noted in § 226.16(b) and paragraphs (b)(1)(xi) and (b)(2)(ii) of this section, a sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility (and a State agency is prohibited from approving such an application) if the facility is on the National disqualified list.

(iv) *Effect on individuals.* No individual on the National disqualified list may serve as a principal in any institution or facility or as a day care home provider.

(A) *Principal for an institution or a sponsored facility.* As noted in paragraphs (b)(1)(xi) and (b)(2)(ii) of this section, the State agency must deny the application of a new or renewing institution if any of the institution's principals is on the National disqualified list. As noted in paragraphs (c)(3)(ii)(B) and (c)(6)(ii)(G)(2) of this section, the State agency must declare an institution seriously deficient and initiate action to terminate the institution's agreement and disqualify the institution if the institution permits an individual who is on the National disqualified list to serve in a principal capacity for the institution or one of its facilities.

(B) *Principal for a sponsored facility.* As noted in § 226.16(b) and paragraphs (b)(1)(xi) and (b)(2)(ii) of this section, a sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility (or a State agency from approving such an application) if any of the facility's principals are on the National disqualified list.

(C) *Serving as a day care home.* As noted in § 226.16(b) and paragraphs (b)(1)(xi) and (b)(2)(ii) of this section, a sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility (and a State agency is prohibited from approving such an application) if the facility is on the National disqualified list.

(v) *Removal of institutions, principals, and individuals from the list.* Once included on the National disqualified list, an institution and responsible principals and responsible individuals remain on the list until such time as FNS, in consultation with the appropriate State agency, determines that the serious deficiency(ies) that led to

their placement on the list has(ve) been corrected, or until seven years have elapsed since they were disqualified from participation. However, if the institution, principal or individual has failed to repay debts owed under the Program, they will remain on the list until the debt has been repaid.

(vi) *Removal of day care homes from the list.* Once included on the National disqualified list, a day care home will remain on the list until such time as the State agency determines that the serious deficiency(ies) that led to its placement on the list has(ve) been corrected, or until seven years have elapsed since its agreement was terminated for cause. However, if the day care home has failed to repay debts owed under the Program, it will remain on the list until the debt has been repaid.

(8) *State agency list.* (i) *Maintenance of the State agency list.* The State agency must maintain a State agency list (in the form of an actual paper or electronic list or retrievable paper records). The list must be made available to FNS upon request, and must include the following information:

(A) Institutions determined to be seriously deficient by the State agency, including the names and mailing addresses of the institutions and the status of the institutions as they move through the possible subsequent stages of corrective action, proposed termination, suspension, agreement termination, and/or disqualification, as applicable;

(B) Responsible principals and individuals who have been disqualified from participation by the State agency, including their names, mailing addresses, and dates of birth; and

(C) Day care home providers whose agreements have been terminated for cause by a sponsoring organization in the State, including their names, mailing addresses, and dates of birth.

(ii) *Referral of disqualified day care homes to FNS.* Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, the State agency must provide the appropriate FNSRO the name, mailing address, and date of birth of each day care home provider whose agreement is terminated for cause on or after July 29, 2002.

(iii) *Prior lists of disqualified day care homes.* If on July 29, 2002 the State agency maintains a list of day care homes that have been disqualified from participation, the State agency may continue to prohibit participation by those day care homes. However, the State agency must remove a day care home from its prior list no later than the time at which the State agency determines that the serious deficiency(ies) that led to the day care home's placement on the list has(ve) been corrected or July 29, 2009 (unless the day care home has failed to repay debts owed under the Program). If the day care home has failed to repay its debt, the State agency may keep the day care home on its prior list until the debt has been repaid.

(d) *Licensing/approval for institutions or facilities providing child care.* This section prescribes State agency responsibilities to ensure that child care centers and day care homes meet the licensing/approval criteria set forth in this part. Emergency shelters are exempt from licensing/approval requirements contained in this section but must meet the requirements of paragraph (d)(2) to be eligible to participate in the Program. Independent centers shall submit such documentation to the State agency on their own behalf.

(1) *General.* Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, day care homes, and outside-school-hours care centers either:

(i) Are licensed or approved by Federal, State, or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Program if their licenses lapse or are terminated; or

(ii) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied; or

(iii) Receive Title XX funds for providing child care, if licensing or approval is not available; or

(iv) Demonstrate compliance with applicable State or local child care standards to the State agency, if li-

censing is not available and title XX funds are not received; or

(v) Demonstrate compliance with CACFP child care standards to the State agency, if licensing or approval is not available and Title XX funds are not received.

(2) *Health and safety requirements for emergency shelters.* To be eligible to participate in the Program, emergency shelters must meet applicable State or local health and safety standards.

(3) *CACFP child care standards.* (i) When licensing or approval is not available, independent child care centers, and sponsoring organizations on behalf of their child care centers or day care homes, may elect to demonstrate compliance, annually, with the following CACFP child care standards or other standards specified in paragraph (d)(4) of this section:

(A) *Staff/child ratios.* (1) Day care homes provide care for no more than 12 children at any one time. One home caregiver is responsible for no more than 6 children ages 3 and above, or no more than 5 children ages 0 and above. No more than 2 children under the age of 3 are in the care of 1 caregiver. The home provider's own children who are in care and under the age of 14 are counted in the maximum ratios of caregivers to children.

(2) Child care centers and outside-school-hours care centers do not fall below the following staff/child ratios:

(i) For children under 6 weeks of age—1:1

(ii) For children ages 6 weeks up to 3 years—1:4

(iii) For children ages 3 years up to 6 years—1:6

(iv) For children ages 6 years up to 10 years—1:15

(v) For children ages 10 and above—1:20

(B) *Nondiscrimination.* Day care services are available without discrimination on the basis of race, color, national origin, sex, age, or handicap.

(C) *Safety and sanitation.* (1) A current health/sanitation permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(2) A current fire/building safety permit or satisfactory report of an inspection conducted by local authorities

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within the past 12 months shall be submitted.

(3) Fire drills are held in accordance with local fire/building safety requirements.

(D) *Suitability of facilities.* (1) Ventilation, temperature, and lighting are adequate for children's safety and comfort.

(2) Floors and walls are cleaned and maintained in a condition safe for children.

(3) Space and equipment, including rest arrangements for preschool age children, are adequate for the number of age range of participating children.

(E) *Social services.* Independent centers, and sponsoring organizations in coordination with their facilities, have procedures for referring families of children in care to appropriate local health and social service agencies.

(F) *Health services.* (1) Each child is observed daily for indications of difficulties in social adjustment, illness, neglect, and abuse, and appropriate action is initiated.

(2) A procedure is established to ensure prompt notification of the parent or guardian in the event of a child's illness or injury, and to ensure prompt medical treatment in case of emergency.

(3) Health records, including records of medical examinations and immunizations, are maintained for each enrolled child. (Not applicable to day care homes.)

(4) At least one full-time staff member is currently qualified in first aid, including artificial respiration techniques. (Not applicable to day care homes.)

(5) First aid supplies are available.

(6) Staff members undergo initial and periodic health assessments.

(G) *Staff training.* The institution provides for orientation and ongoing training in child care for all caregivers.

(H) *Parental involvement.* Parents are afforded the opportunity to observe their children in day care.

(I) *Self-evaluation.* The institution has established a procedure for periodic self-evaluation on the basis of CACFP child care standards.

(ii) When licensing or approval is not available, independent outside-school-hours care centers, and sponsoring or-

ganizations on behalf of their outside-school-hours care centers, may elect to demonstrate compliance with child care standards developed by the State agency which shall include, as a minimum, information on: (A) Fire/safety, (B) sanitation, (C) organized activities, (D) kitchen and restroom facilities, (E) appropriateness of games and materials, (F) availability of emergency medical care, and (G) child-staff ratios as indicated in § 226.6(d)(2)(i)(A). For items (A) and (B), of this paragraph, appropriate State or local permits are required.

(4) *Alternate approval procedures.* Each State agency shall establish procedures to review information submitted by institutions for centers or homes for which licensing or approval is not available in order to establish eligibility for the Program. Licensing or approval is not available when (i) no Federal, State, or local licensing/approval standards have been established for child care centers, outside-school-hours care centers, or day care homes; or (ii) no mechanism exists to determine compliance with licensing/approval standards. In these situations, independent centers, and sponsoring organizations on behalf of their facilities, may choose to demonstrate compliance with either CACFP child care standards, applicable State child care standards, or applicable local child care standards. State agencies shall provide information about applicable State child care standards and CACFP child care standards to institutions, but may require institutions electing to demonstrate compliance with applicable local child care standards to identify and submit these standards. The State agency may permit independent centers, and sponsoring organizations on behalf of their facilities, to submit self-certification forms, and may grant approval without first conducting a compliance review at the center or facility. But the State agency shall require submission of health/sanitation and fire/safety permits or certificates for all independent centers and facilities seeking alternate child care standards approval. Compliance with applicable child care standards are subject to review in accordance with § 226.6(o).

(e) *Licensing/approval for adult day care centers.* This paragraph prescribes State agency responsibilities to ensure that adult day care centers meet the licensing/approval criteria set forth in this part. Sponsoring organizations shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent adult day care centers shall submit such documentation to the State agency on their own behalf. Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating adult day care centers either:

(1) Are licensed or approved by Federal, State or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Program if their licenses lapse or are terminated; or

(2) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied.

(f) *Miscellaneous responsibilities.* State agencies must require institutions to comply with the applicable provisions of this part and must provide or collect the information specified in this paragraph (f).

(1) *Annual responsibilities.* In addition to its other responsibilities under this part, each State agency must annually:

(i) Inform institutions that are pricing programs of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price;

(ii) Provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program;

(iii) Coordinate with the State agency that administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list to sponsoring organizations of day care homes by February 15 of each

year, unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October, in which case the State agency must provide the list to such sponsoring organizations within 15 calendar days of its receipt from the State agency that administers the National School Lunch Program. The State agency must also provide each sponsoring organization of day care homes with census data, as provided to the State agency by FNS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced-price meals. In addition, the State agency must ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is made using school or census data. Determinations of a day care home's eligibility as a tier I day care home must be valid for one year if based on a provider's household income, five years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a day care home is no longer in a qualified area. The State agency must not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data;

(iv) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement;

(v) Require centers to submit current eligibility information on enrolled participants, in order to calculate a blended rate or claiming percentage in accordance with § 226.9(b);

(vi) Require each sponsoring organization to submit an administrative budget with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration, for

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the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796-2 ("Financial Management in the Child and Adult Care Food Program"), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. In addition, the administrative budget submitted by a sponsor of centers must demonstrate that the administrative costs to be charged to the Program do not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver in accordance with § 226.7(g);

(vii) Require each institution to issue a media release, unless the State agency has issued a Statewide media release on behalf of all its institutions;

(viii) Require each independent center to provide information concerning its licensing/approval status, and require each sponsoring organization to provide information concerning the licensing/approval status of its facilities, unless the State agency has other means of confirming the licensing/approval status of any independent center or facility providing care;

(ix) Require each sponsoring organization to submit verification that all facilities under its sponsorship have adhered to the training requirements set forth in Program regulations; and

(x) Require each sponsoring organization of family day care homes to submit to the State agency a list of family day care home providers receiving tier I benefits on the basis of their participation in the Food Stamp Program. Within 30 days of receiving this list, the State agency will provide this list to the State agency responsible for the administration of the Food Stamp Program.

(2) *Triennial responsibilities.* In addition to its other responsibilities under this part, each State agency must, at intervals not to exceed 36 months:

(i) Require participating institutions to re-apply to continue their participation; and

(ii) Require sponsoring organizations to submit a management plan with the elements set forth in paragraph (b)(1)(iv) of this section.

(3) *Other responsibilities.* At intervals and in a manner specified by the State agency, but not more frequently than annually, the State agency may:

(i) Require independent centers to submit a budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the independent center's qualifications to manage Program funds. Such budget must demonstrate that the independent center will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796-2 ("Financial Management in the Child and Adult Care Food Program"), parts 3015, 3016 and 3019 of this title and applicable Office of Management and Budget circulars;

(ii) Request institutions to report their commodity preference;

(iii) Require a private nonprofit institution to submit evidence of tax exempt status in accordance with § 226.15(a);

(iv) Require for-profit child care centers and for-profit outside-school-hours care centers to submit documentation of:

(A) Eligibility of at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) for free or reduced price meals; or

(B) Compensation received under title XX of the Social Security Act for nonresidential day care services and certification that at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were title XX beneficiaries during the most recent calendar month.

(v) Require for-profit adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants

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in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(vi) Request each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(vii) Perform verification in accordance with § 226.23(h) and paragraph (m)(4) of this section. State agencies verifying the information on free and reduced-price applications must ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

(g) *Program expansion.* Each State agency must take action to expand the availability of benefits under this Program, and must conduct outreach to potential sponsoring organizations of family day care homes that might administer the Program in low-income or rural areas.

(h) *Commodity distribution.* The State agency must require new institutions to state their preference to receive commodities or cash-in-lieu of commodities when they apply, and may periodically inquire as to participating institutions' preference to receive commodities or cash-in-lieu of commodities. State agencies must annually provide institutions with information on foods available in plentiful supply, based on information provided by the Department. Each institution electing cash-in-lieu of commodities shall receive such payments. Each institution which elects to receive commodities shall have commodities provided to it unless the State agency, after consultation with the State commodity distribution agency, demonstrates to FNS that distribution of commodities to the number of such institutions would be impracticable. The State agency may then, with the concurrence of FNS, provide cash-in-lieu of commodities for all institutions. A State agency request for cash-in-lieu of all commodities shall be submitted to FNS not later than May 1 of the school year preceding the school year for which the request is made. The State agency shall, by June 1 of each year, submit a list of institutions which have elected to receive commodities to the

State commodity distribution agency, unless FNS has approved a request for cash-in-lieu of commodities for all institutions. The list shall be accompanied by information on the average daily number of lunches and suppers to be served to participants by each such institution.

(i) *Standard contract.* Each State agency shall develop a standard contract in accordance with § 226.21 and provide for its use between institutions and food service management companies. The contract shall expressly and without exception stipulate:

(1) The institution shall provide the food service management company with a list of the State agency approved child care centers, day care homes, adult day care centers, and outside-school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;

(2) The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;

(3) The food service management company shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus

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upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;

(5) The books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;

(6) The food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;

(10) All meals served under the Program shall meet the requirements of § 226.20;

(11) All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with § 226.20.

(j) *Procurement provisions.* State agencies must require institutions to adhere to the procurement provisions set forth in § 226.22 and must determine

that all meal procurements with food service management companies are in conformance with bid and contractual requirements of § 226.22.

(k) *Administrative reviews for institutions and responsible principals and responsible individuals*—(1) *General.* The State agency must develop procedures for offering administrative reviews to institutions and responsible principals and responsible individuals. The procedures must be consistent with paragraph (k) of this section.

(2) *Actions subject to administrative review.* Except as provided in § 226.8(g), the State agency must offer an administrative review for the following actions:

(i) *Application denial.* Denial of a new or renewing institution's application for participation (see paragraph (b) of this section, on State agency review of an institution's application; and paragraphs (c)(1) and (c)(2) of this section, on State agency denial of a new or renewing institution's application);

(ii) *Denial of sponsored facility application.* Denial of an application submitted by a sponsoring organization on behalf of a facility;

(iii) *Notice of proposed termination.* Proposed termination of an institution's agreement (see paragraphs (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

(iv) *Notice of proposed disqualification of a responsible principal or responsible individual.* Proposed disqualification of a responsible principal or responsible individual (see paragraphs (c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(v) *Suspension of participation.* Suspension of an institution's participation (see paragraphs (c)(5)(i)(B) and (c)(5)(ii)(D) of this section, dealing with suspension for health or safety reasons

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or submission of a false or fraudulent claim);

(vi) *Start-up or expansion funds denial.* Denial of an institution's application for start-up or expansion payments (see § 226.7(h));

(vii) *Advance denial.* Denial of a request for an advance payment (see § 226.10(b));

(viii) *Recovery of advances.* Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (see § 226.10(b)(3));

(ix) *Claim denial.* Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under § 226.10(e)) (see §§ 226.10(f) and 226.14(a));

(x) *Claim deadline exceptions and requests for upward adjustments to a claim.* Decision by the State agency not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim (see § 226.10(e));

(xi) *Overpayment demand.* Demand for the remittance of an overpayment (see § 226.14(a)); and

(xii) *Other actions.* Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

(3) *Actions not subject to administrative review.* The State agency is prohibited from offering administrative reviews of the following actions:

(i) *FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.* A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (see § 226.10(e));

(ii) *Determination of serious deficiency.* A determination that an institution is seriously deficient (see paragraphs (c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(iii) *Disqualification and placement on State agency list and National disqualified list.* Disqualification of an institu-

tion or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list (see paragraphs (c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C) of this section, dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations); or

(iv) *Termination.* Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS (see paragraphs (c)(3)(i) and (c)(7)(ii) of this section).

(4) *Provision of administrative review procedures to institutions and responsible principals and responsible individuals.* The State agency's administrative review procedures must be provided:

(i) Annually to all institutions;

(ii) To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in paragraph (k)(2) of this section; and

(iii) Any other time upon request.

(5) *Procedures.* Except as described in paragraph (k)(9) of this section, which sets forth the circumstances under which an abbreviated administrative review is held, the State agency must follow the procedures in this paragraph (k)(5) when an institution or a responsible principal or responsible individual appeals any action subject to administrative review as described in paragraph (k)(2) of this section.

(i) *Notice of action.* The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, must be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action.

(ii) *Time to request administrative review.* The request for administrative review must be submitted in writing not later than 15 days after the date the notice of action is received, and the

State agency must acknowledge the receipt of the request for an administrative review within 10 days of its receipt of the request.

(iii) *Representation.* The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

(iv) *Review of record.* Any information on which the State agency's action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

(v) *Opposition.* The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

(vi) *Hearing.* A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review. If the institution's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the administrative review official. If a hearing is requested, the institution, the responsible principals and responsible individuals, and the State agency must be provided with at least 10 days advance notice of the time and place of the hearing.

(vii) *Administrative review official.* The administrative review official must be independent and impartial. This means that, although the administrative re-

view official may be an employee of the State agency, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals must be permitted to contact the administrative review official directly if they so desire.

(viii) *Basis for decision.* The administrative review official must make a determination based solely on the information provided by the State agency, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

(ix) *Time for issuing a decision.* Within 60 days of the State agency's receipt of the request for an administrative review, the administrative review official must inform the State agency, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is an administrative requirement for the State agency and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

(x) *Final decision.* The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

(6) *Federal audit findings.* FNS may assert a claim against the State agency, in accordance with the procedures set forth in § 226.14(c), when an administrative review results in the dismissal of a claim against an institution asserted by the State agency based upon Federal audit findings.

(7) *Record of result of administrative reviews.* The State agency must maintain searchable records of all administrative reviews and their disposition.

(8) *Combined administrative reviews for responsible principals and responsible individuals.* The State agency must conduct the administrative review of the

proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

(9) *Abbreviated administrative review.* The State agency must limit the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because:

(i) The information submitted on the application was false (see paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A) of this section);

(ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list (see paragraph (b)(12) of this section);

(iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program (see paragraph (b)(13) and (c)(3)(ii)(S) of this section); or

(iv) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (see paragraphs (b)(14) and (c)(3)(ii)(T) of this section).

(10) *Effect of State agency action.* The State agency's action must remain in effect during the administrative review. The effect of this requirement on particular State agency actions is as follows.

(i) *Overpayment demand.* During the period of the administrative review, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agen-

cy must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

(ii) *Recovery of advances.* During the administrative review, the State agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(iii) *Program payments.* The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of this section.

(1) *Administrative reviews for day care homes—(1) General.* The State agency must ensure that, when a sponsoring organization proposes to terminate its Program agreement with a day care home for cause, the day care home is provided an opportunity for an administrative review of the proposed termination. The State agency may do this either by electing to offer a State-level administrative review, or by electing to require the sponsoring organization to offer an administrative review. The State agency must notify the appropriate FNSRO of its election under this option, or any change it later makes under this option, by September 25, 2002 or within 30 days of any subsequent change under this option. The State agency must make the same election with regard to who offers the administrative review to any day care home in the Program in that State. The State agency or the sponsoring organization must develop procedures for offering and providing these administrative reviews, and these procedures must be consistent with this paragraph (1).

(2) *Actions subject to administrative review.* The State agency or sponsoring

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organization must offer an administrative review to a day care home that appeals a notice of intent to terminate their agreement for cause or a suspension of their participation (see §§ 226.16(1)(3)(iii) and (1)(4)(ii)).

(3) *Actions not subject to administrative review.* Neither the State agency nor the sponsoring organization is required to offer an administrative review for reasons other than those listed in paragraph (1)(2) of this section.

(4) *Provision of administrative review procedures to day care homes.* The administrative review procedures must be provided:

- (i) Annually to all day care homes;
- (ii) To a day care home when the sponsoring organization takes any action subject to an administrative review as described in paragraph (1)(2) of this section; and
- (iii) Any other time upon request.

(5) *Procedures.* The State agency or sponsoring organization, as applicable (depending on the State agency's election pursuant to paragraph (1)(1) of this section) must follow the procedures in this paragraph (1)(5) when a day care home requests an administrative review of any action described in paragraph (1)(2) of this section.

(i) *Uniformity.* The same procedures must apply to all day care homes.

(ii) *Representation.* The day care home may retain legal counsel, or may be represented by another person.

(iii) *Review of record and opposition.* The day care home may review the record on which the decision was based and refute the action in writing. The administrative review official is not required to hold a hearing.

(iv) *Administrative review official.* The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of the State agency or an employee or board member of the sponsoring organization, he/she must not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review;

(v) *Basis for decision.* The administrative review official must make a determination based on the information pro-

vided by the sponsoring organization and the day care home and on Federal and State laws, regulations, policies, and procedures governing the Program.

(vi) *Time for issuing a decision.* The administrative review official must inform the sponsoring organization and the day care home of the administrative review's outcome within the period of time specified in the State agency's or sponsoring organization's administrative review procedures. This timeframe is an administrative requirement for the State agency or sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.

(vii) *Final decision.* The determination made by the administrative review official is the final administrative determination to be afforded the day care home.

(m) *Program assistance—(1) General.* The State agency must provide technical and supervisory assistance to institutions and facilities to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (parts 15, 15a, and 15b of this title). The State agency must maintain documentation of supervisory assistance activities, including reviews conducted, corrective actions prescribed, and follow-up efforts.

(2) *Review priorities.* In choosing institutions for review, in accordance with paragraph (m)(6) of this section, the State agency must target for more frequent review institutions whose prior review included a finding of serious deficiency.

(3) *Review content.* As part of its conduct of reviews, the State agency must assess each institution's compliance with the requirements of this part pertaining to:

- (i) Recordkeeping;
- (ii) Meal counts;
- (iii) Administrative costs;

(iv) Any applicable instructions and handbooks issued by FNS and the Department to clarify or explain this part, and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part;

(v) Facility licensing and approval;

(vi) Compliance with the requirements for annual updating of enrollment forms;

(vii) If an independent center, observation of a meal service;

(viii) If a sponsoring organization, training and monitoring of facilities;

(ix) If a sponsoring organization of day care homes, implementation of the serious deficiency and termination procedures for day care homes and, if such procedures have been delegated to sponsoring organizations in accordance with paragraph (1)(1) of this section, the administrative review procedures for day care homes;

(x) If a sponsoring organization, implementation of the household contact system established by the State agency pursuant to paragraph (m)(5) of this section;

(xi) If a sponsoring organization of day care homes, the requirements for classification of tier I and tier II day care homes; and

(xii) All other Program requirements.

(4) *Review of sponsored facilities.* As part of each required review of a sponsoring organization, the State agency must select a sample of facilities, in accordance with paragraph (m)(6) of this section. As part of such reviews, the State agency must conduct verification of Program applications in accordance with § 226.23(h) and must compare available enrollment and attendance records and the sponsoring organization's review results for that facility to meal counts submitted by those facilities for five days.

(5) *Household contacts.* As part of their monitoring of institutions, State agencies must establish systems for making household contacts to verify the enrollment and attendance of participating children. Such systems must specify the circumstances under which household contacts will be made, as well as the procedures for conducting household contacts. In addition, State agencies must establish a system for

sponsoring organizations to use in making household contacts as part of their review and oversight of participating facilities. Such systems must specify the circumstances under which household contacts will be made, as well as the procedures for conducting household contacts. State agencies must submit to FNSROs, no later than April 1, 2005, the policies and procedures they have developed governing household contacts conducted by both the State agency, as part of institution and facility reviews conducted in accordance with this paragraph (m), and by sponsoring organizations as part of the facility review process described in § 226.16(d)(5).

(6) *Frequency and number of required institution reviews.* The State agency must annually review at least 33.3 percent of all institutions. At least 15 percent of the total number of facility reviews required must be unannounced. The State agency must review institutions according to the following schedule:

(i) Independent centers and sponsoring organizations of 1 to 100 facilities must be reviewed at least once every three years. A review of such a sponsoring organization must include reviews of 10 percent of the sponsoring organization's facilities;

(ii) Sponsoring organizations with more than 100 facilities must be reviewed at least once every two years. These reviews must include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000; and

(iii) New institutions that are sponsoring organizations of five or more facilities must be reviewed within the first 90 days of Program operations.

(n) *Program irregularities.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence of such investigations and actions. FNS and OIG may make investigations at the request of the State agency, or whenever FNS or OIG determines that investigations are appropriate.

(o) *Child care standards compliance.* The State agency shall, when conducting administrative reviews of child care centers, outside-school-hours care centers, and day care homes approved by the State agency under paragraph (d)(3) of this section, determine compliance with the child care standards used to establish eligibility, and the institution shall ensure that all violations are corrected and the State shall ensure that the institution has corrected all violations. If violations are not corrected within the specified timeframe for corrective action, the State agency must issue a notice of serious deficiency in accordance with paragraph (c) of this section or § 226.16(1), as appropriate. However, if the health or safety of the children is imminently threatened, the State agency or sponsoring organization must follow the procedures set forth at paragraph (c)(5)(i) of this section, or § 226.16(1)(4), as appropriate. The State agency may deny reimbursement for meals served to attending children in excess of authorized capacity.

(p) *Sponsoring organization agreement.* Each State agency shall develop and provide for the use of a standard form of written permanent agreement between each day care home sponsoring organization and all day care homes participating in the Program under such organization. Nothing in the preceding sentence shall be construed to limit the ability of the sponsoring organization to suspend or terminate the permanent agreement in accordance with § 226.16(1). The State agency must also include in this agreement its policy to restrict transfers of day care homes between sponsoring organizations. The policy must restrict the transfers to no more frequently than once per year, except under extenuating circumstances, such as termination of the sponsoring organization's agreement or other circumstances defined by the State agency. However, the State agency may, at the request of the sponsor, approve an agreement developed by the sponsor. State agencies may develop a similar form for use between sponsoring organizations and other types of facilities.

(q) Following its reviews of institutions and facilities under §§ 226.6(m)

and 226.23(h) conducted prior to July 1, 1988, the State agency shall report data on key elements of program operations on a form designated by FNS. These key elements include but are not limited to the program areas of meal requirements, determination of eligibility for free and reduced price meals, and the accuracy of reimbursement claims. These forms shall be submitted within 90 days of the completion of the data collection for the institutions except that, if the State has elected to conduct reviews of verification separate from its administrative reviews, the State shall retain data until all key elements have been reviewed and shall report all data for each institution on one form within 90 days of the completion of the data collection for all key elements for that institution. States shall ensure that all key element data for an institution is collected during a 12-month period.

(r) *WIC program information.* State agencies must provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC income eligibility guidelines, to participating institutions. In addition, the State agency must ensure that:

(1) Participating family day care homes and sponsored child care centers receive this information, and periodic updates of this information, from their sponsoring organizations or the State agency; and

(2) The parents of enrolled children also receive this information.

[47 FR 36527, Aug. 20, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 226.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 226.7 State agency responsibilities for financial management.

(a) This section prescribes standards of financial management systems in administering Program funds by the State agency and institutions.

(b) Each State agency shall maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial management policies in